



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACC
GOVERNOR

DAVID P. LITTELL
COMMISSIONER

IN THE MATTER OF

COLBY & GALE, INC)	
P O BOX 208)	
DAMARISCOTTA, MAINE)	
LINCOLN COUNTY)	
and)	ADMINISTRATIVE CONSENT
DAY BLOCK TRUST)	AGREEMENT
C/O RALPH H DOERING, JR., TRUSTEE)	(38 M R S A § 347-A)
18 MOUNT VERNON STREET #1)	
BOSTON, MASSACHUSETTS)	
SUFFOLK COUNTY)	
)	
OIL DISCHARGE PREVENTION AND)	
POLLUTION CONTROL)	

This Agreement, by and among Colby & Gale, Inc. ("Colby & Gale"), Day Block Trust ("Day Block"), the Maine Board of Environmental Protection (the "Board"), and the State of Maine, Office of the Attorney General ("AG") is entered into pursuant to 38 M R S A § 347-A(1) and in accordance with the Maine Department of Environmental Protection's ("Department" or "DEP") Administrative Consent Agreement Policy, as amended

THE PARTIES AGREE AS FOLLOWS

- 1 Colby & Gale is a corporation in good standing which is organized and exists under the laws of Maine Colby & Gale is a heating oil delivery and oil burner service company Robert D Clifford is the President of Colby & Gale
- 2 Day Block is a trust which owns rental properties in Maine Ralph H Doering, Jr is Trustee of Day Block
- 3 Throughout the period of time addressed by this Agreement, Colby & Gale and Day Block were subject to the *Oil Discharge Prevention and Pollution Control law*, 38 M R S A § 543 This section prohibits the unlicensed discharge of oil to Waters of the State, including ground water
- 4 Day Block owns real property located at 128 Main Street in the Town of Damariscotta, Maine The Day Block property is further described in a deed recorded in Book 1044, Page 87 in the Lincoln County Registry of Deeds

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333 0017
(207) 287 7688 FAX (207) 287-7826
RAY BLDG. HOSPITAL ST

BANGOR
106 HOGAN ROAD
BANGOR, MAINE 04401
(207) 941-4570 FAX (207) 941 4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822 6300 FAX (207) 822 6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769 2094
(207) 764 0477 FAX (207) 760-3143

- 5 On the morning of July 3, 2007, the Department received a report of an oil discharge to the Damariscotta River. This prohibited discharge of oil to the Damariscotta River continued on July 4, 2007, when oil was observed discharging from a storm drain outfall pipe.
- 6 On July 5, 2007, the Department's emergency response actions, taken pursuant to its authority under 38 M R S A §§ 548-551, had effectively stopped the discharge of observable oil from the storm drain outfall pipe to the Damariscotta River.
- 7 This prohibited discharge of oil impacted coastal waters of the Damariscotta River estuary, sediment, soil, and a stormwater drain system.
- 8 Department staff discovered that an abandoned oil line associated with two (2) aboveground heating oil tanks located in the basement of the Day Block property was the source of the prohibited discharge of oil described in Paragraphs 5-7 of this Agreement.

The specific leaking source was an oil return line that was abandoned when Colby & Gale completed an emergency replacement of the furnace at Day Block in the winter of 2000. The abandoned oil line segment was found at an elevation below the aboveground tanks, the line was not capped, plugged, sealed or removed from the tank but ended at a ball valve fitting. The abandoned oil line was bare, unsleeved copper. The ball valve fitting was at the end of the abandoned oil line opposite the tank and was found partially open. It is believed that the leak commenced sometime after Colby & Gale filled the tanks with heating oil at around 10:00 am on July 2. There is no evidence that the ball valve was intentionally opened.

- 9 Fuel was first discovered in the Damariscotta River in the early morning of July 3 and by about 8:30 am, the Damariscotta Fire Department had notified the DEP of the spill and commenced remediation efforts with absorbent booms. Damariscotta Fire Chief Neil Genthner assumed that the source was a diesel spill from a boat on the river, and undertook to investigate such sources. By the evening of July 3, the Fire Department was investigating land sources, and at around 8:30 pm, Chief Genthner spoke with Colby & Gale's Service Manager, Troy Sawyer, to alert Colby & Gale and ask for assistance in locating the source. Colby & Gale immediately inventoried all of their properties, including a gas station and laundromat, and checked other visible oil tanks around town.

Early in the morning of July 4, the Damariscotta Fire Department discovered oil leaking out of the town's storm drain into the river and reported this information to the DEP. On July 4, around 7:00 am, Fire Chief Genthner called Troy Sawyer to report that the Fire Department had traced the source of the leak to the Day Block building. Mr. Sawyer immediately went to the building and asked Chief Genthner whether the DEP had been notified. Chief Genthner confirmed that it had. Colby & Gale removed and capped the abandoned oil line.

Upon notification by the Damariscotta Fire Department on July 4, DEP representatives immediately responded and were on site and commenced the necessary clean up operations with private contractors. The Department completed clean up operations through soil excavation and clean up later in July and early August, 2007.

- 10 Colby & Gale concedes that by failing to remove, seal, or cap the abandoned oil line upon replacing the Day Block furnace system in 2000, it failed to bring the total oil boiler and oil line system at the Day Block property into compliance with the *Installation of Oil Burning Equipment Rules*, 02-038 CMR 9.
- 11 The oil leak from the abandoned line migrated from the basement of the Day Block building to a storm sewer under the sidewalk on Main Street, Damariscotta and then into the Damariscotta River. The Department claims that the leak constitutes a prohibited discharge of oil by Day Block and Colby & Gale in violation of 38 M R S A § 543.
- 12 On August 27, 2007, the Department issued a Notice of Violation to Colby & Gale and Day Block pursuant to 38 M.R.S.A. § 347-A(1)(B).
- 13 Day Block has been found eligible for coverage by the Ground Water Oil Clean-up Fund ("Fund") for payment of all costs incurred by the Department during the clean up of the discharge described in Paragraph 11. Day Block will pay to the Fund a deductible of seven hundred fifty dollars (\$750.00).
- 14 This agreement shall become effective only if it is accepted by the Board and approved by the Attorney General.
- 15 To resolve the Department's claims of violations identified in this Consent Agreement and the parties' dispute related thereto, Colby & Gale and Day Block agree to
 - A Ensure that the furnace and oil lines at Day Block conform with the Department's laws and regulations and relevant regulations administered by the Oil and Solid Fuel Board (02-381 CMR Chapters 1-14).
 - B Immediately report all oil spills for tanks in their custody or control to the Department of Environmental Protection within two (2) hours of discovery and, unless, clean-up actions have already been commenced by the Department, commence clean up of any oil spills from such tanks. This may be done by calling 1-800-482-0777 (24 hours). The Department will make the decision on how much clean up is needed. This also includes taking actions to control and clean up a spill before Department staff is notified or arrives on site, and properly disposing of oil and associated waste.

- C Within thirty (30) days of signature to this agreement, submit for the Department's review and approval a written operating procedure for spill reporting and emergency response to be distributed to Colby & Gale staff working in Maine. The procedure must include the Maine oil spill reporting phone numbers (e.g., 1-800-482-0777)
- D. Immediately upon signing this agreement, pay to the Treasurer, State of Maine c/o the Ground Water Oil Clean up Fund the sum of nine thousand dollars (\$9,000.00) as a civil monetary penalty
- 16 The Board and the State of Maine Attorney General grant a release of their cause of action against Colby & Gale and Day Block for the specific violation listed in Paragraph 11 of this Agreement on the express condition that all actions listed in Paragraph 15, above, are completed in accordance with the express terms and conditions of this Agreement, except that no release is granted for any contamination of air, surface waters, ground waters, or soils as a result of the operation of the subject facility or related activities. Nothing in this Agreement shall prevent the Department from requiring additional corrective action if the Department determines that such action is necessary to protect public health, safety or the environment. Nothing in this Agreement shall prevent the Department from seeking recovery of its investigation and clean up costs pursuant to Maine law insofar as such costs are not covered by the Fund as set forth in paragraph 13. The release shall not become effective until all requirements of this Agreement are satisfied.
- 17 Non-compliance with this Agreement voids the release set forth in Paragraph 16 of this Agreement and may lead to an enforcement action pursuant to 38 M R S A §§ 347-A(1)(A), 347-A(5), or 348, as well as pursuit of other remedies.
- 18 Actions taken pursuant to this Agreement shall be completed in accordance with the requirements of all applicable local, state, and federal laws, including but not limited to, permitting or licensing requirements.
- 19 The provisions of this Agreement shall apply to, and be binding on, the parties and their officers, agents, servants, employees, successors, and assigns, and upon those persons in active concert or participation with them who receive actual notice of this Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement of five (5) pages

COLBY & GALE, INC.

BY Robert D. Clifford
Robert D Clifford, PRESIDENT


DATE March 24, 2008

COLBY & GALE, INC , et al
OIL DISCHARGE PREVENTION AND
POLLUTION CONTROL

) ADMINISTRATIVE CONSENT
) AGREEMENT
) (38 M R S A § 347-A)

DAY BLOCK TRUST

BY


Ralph Doering, Jr , TRUSTEE

DATE

March 20, 2008

STATE OF MAINE, DEPARTMENT OF THE ATTORNEY GENERAL

BY

Mary Sauer, Assistant Attorney General

DATE

APPROVED BY

MAINE BOARD OF ENVIRONMENTAL PROTECTION

BY

Virginia Plummer, CHAIR

DATE

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